

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
ETHICS ADJUDICATORY BOARD**

BOARD OF ETHICS

*** DOCKET NO. 2020-5600-ETHICS-A**

IN THE MATTER OF

LESTER SMITH

*** AGENCY TRACKING NO. 5120-030**

DECISION AND ORDER

The Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, requested an adjudicatory hearing to have the Ethics Adjudicatory Board determine whether Lester Smith failed to file his 30-P and 10-P campaign finance disclosure reports by the sixth day after they were due, and his 10-G campaign finance disclosure report by the eleventh day after it was due, in connection with his 2019 candidacy for State Representative, Third Representative District, Parish of Caddo. The Louisiana Board of Ethics proved by clear and convincing evidence that Lester Smith failed to file these reports as alleged. The Louisiana Board of Ethics is authorized to impose an additional civil penalty not to exceed \$10,000 against Lester Smith for each report as allowed by La. R.S. 18:1505.4(A(4)(a) and (b).

APPEARANCES

The hearing was conducted on November 4, 2020, in Baton Rouge, Louisiana, before Panel A of the Ethics Adjudicatory Board.¹ Charles E. Reeves, Jr., appeared as counsel on behalf of the Board of Ethics. Though properly noticed, Lester Smith did not appear for the hearing.²

¹ The panel consisted of administrative law judges Lance B. Vinson (presiding), A. Brock Avery, and Sherlyn Shumpert.

² The *Conference Report and Order* setting this matter for hearing and Division of Administrative Law correspondence notifying Mr. Smith of the hearing date and time were mailed to his last known address on August 12, 2020. These documents are parts of the record in this matter; the Board of Ethics included them as BOE-12, an exhibit that was admitted into evidence.

STATEMENT OF THE CASE

In connection with his 2019 candidacy for State Representative, Third Representative District, Parish of Caddo, the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure (BOE), imposed civil penalties against Lester Smith (Respondent) for failing to file three campaign finance disclosure reports by their deadlines. One report was due by the thirtieth day before the primary election (30-P report), one was due by the tenth day before the primary election (10-P report), and one was due by the tenth day before the general election (10-G report). The BOE then requested a hearing to have the Ethics Adjudicatory Board (EAB) determine whether Respondent failed to file his 30-P and 10-P reports by the sixth day after they were due, and his 10-G report by the eleventh day after it was due, which may subject him to an additional civil penalty not to exceed \$10,000 for each report, as provided by La. R.S. 18:1505.4(A)(4)(a) and (b).

Counsel for the BOE offered thirteen exhibits during the hearing, which were admitted into evidence. Counsel presented the case on behalf of the BOE, and the record was held open through November 13, 2020, to allow BOE the opportunity to offer a signed copy of Respondent's *Notice of Candidacy*. The BOE filed the document, it was admitted into evidence as BOE Exhibit 14, and the record was closed.

This adjudication is conducted in accordance with the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*, the Campaign Finance Disclosure Act (CFDA), La. R.S. 18:1481, *et seq.*, and the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the enabling legislation of the Division of Administrative Law, La. R.S. 49:991, *et seq.*

FINDINGS OF FACT

- 1) Respondent qualified as a candidate for State Representative, Third Representative District, Parish of Caddo, in the October 12, 2019, primary election.³ Respondent received twenty-one percent of the vote in the primary election and did not qualify to participate in the general election.⁴
- 2) When he qualified as a candidate in the October 12, 2019, primary election, Respondent acknowledged that he was subject to the provisions of the CFDA.⁵
- 3) Respondent was required to file a 30-P report no later than September 12, 2019, the thirtieth day prior to the October 12, 2019, primary election.⁶
- 4) Respondent was required to file a 10-P report no later than October 2, 2019, the tenth day prior to the October 12, 2019, primary election.⁷
- 5) Respondent was required to file a 10-G report no later than November 6, 2019, the tenth day prior to the November 16, 2019, general election.⁸
- 6) Respondent did not file his 30-P report, his 10-P report, or his 10-G report by the respective deadlines.⁹
- 7) On January 3, 2020, the BOE issued a late fee assessment order to Respondent that assessed a civil penalty of \$2,000, for his failure to file the 30-P report.¹⁰ On March 6, 2020, the BOE issued late fee assessment orders to Respondent that assessed a civil penalty of \$2,000

³ See BOE Exhibits 2 (Louisiana Secretary of State certificate and *Notice of Candidacy*) and 14 (*Notice of Candidacy*, signed copy).

⁴ BOE Exhibit 3.

⁵ BOE Exhibit 14.

⁶ See La. R.S. 18:1495.4(B)(3).

⁷ See La. R.S. 18:1495.4(B)(4).

⁸ See La. R.S. 18:1495.4(B)(5).

⁹ BOE Exhibit 9 (Affidavit of Angela Newsom, Director of Campaign Finance for the BOE, stating that, as of October 13, 2020, Respondent had still not filed a 30-P, 10-P, or 10-G report).

¹⁰ BOE Exhibit 6.

for his failure to file the 10-G report and another civil penalty of \$2,000 for his failure to file the 10-P reports¹¹ The late fee assessment orders were mailed to Respondent at the address provided on his *Notice of Candidacy*: 4148 Theo Street, Shreveport, Louisiana 71109. Respondent was notified in the letters accompanying the late fee assessment orders that he could be subject to “an additional \$10,000 penalty” for each of these unfiled reports.¹²

- 8) The BOE mailed a copy of the *Request for Hearing* to Respondent by certified mail, return receipt requested, at the Theo Street address; it was delivered on June 2, 2020.¹³

CONCLUSIONS OF LAW

Respondent knowingly failed to file a 30-P and his 10-P reports by the sixth day after they were due, and he knowingly failed to file his 10-G report by the eleventh day after it was due. For these failures, the BOE is authorized to impose additional civil penalties against Respondent as allowed by La. R.S. 18:1505.4(A)(4)(a) and (b).

Adjudicatory hearings under La. R.S. 18:1505.4(A)(4)(a-b) cover two kinds of campaign finance disclosure reports candidates must file in connection with elections. La. R.S. 18:1505.4(A)(4)(a) addresses reports that candidates must file between the time the candidate qualified for the election and the election day. La. R.S. 18:1505.4(A)(4)(b) addresses “other reports” candidates must file in connection with elections that fall outside the time frame in the previous provision. In either case, the BOE must prove by clear and convincing evidence¹⁴ that

¹¹ BOE Exhibits 7 and 8.

¹² See BOE Exhibits 6-8.

¹³ See BOE Exhibit 8.

¹⁴ See La. R.S. 42:1141.5(C). “‘Clear and convincing evidence’, in general, means that the fact of guilt must be proven to a greater degree than by ‘a mere preponderance of the evidence’ but less than by ‘beyond a reasonable doubt.... The standard requires that the existence of the disputed fact be [h]ighly probable, that is, much more probable than its non-existence.’” *Louisiana State Bar Ass’n v. Edwins*, 329 So. 2d 437, 442 (La. 1976).

the candidate knowingly¹⁵ to file a required report within the six or eleven-day period following when it was due, respectively.

Respondent was a candidate for State Representative, Third Representative District, Parish of Caddo which is a district office.¹⁶ Every candidate (or his campaign treasurer) for a district office is required to file certain campaign finance disclosure reports by the statutory deadlines.¹⁷ Failure to timely submit required reports constitutes a violation of the CFDA.¹⁸

As a candidate for a district office, Respondent was required to file a 30-P report by the thirtieth day prior to the primary election,¹⁹ a 10-P report by the tenth day prior to the primary election,²⁰ and a 10-G report by the tenth day prior to the general election.²¹ Respondent did not file the 30-P and 10-P reports by the statutory deadlines or by the sixth day after they were due, and did not file the 10-G report by the statutory deadline or by the eleventh day after it was due.

If, after conducting an adjudicatory hearing, the EAB determines that Respondent knowingly failed to file a required campaign finance disclosure report within the applicable time period, then the BOE may impose an additional civil penalty not to exceed \$10,000 against Respondent for each report that he failed to timely file.²² Failure to file a required report within three days after the final date for filing creates a rebuttable presumption of intent to not file the report.²³ Nothing in evidence rebuts this statutory presumption.

With the benefit of the un rebutted statutory presumption of intent not to file, the BOE proved by clear and convincing evidence that Respondent knowingly violated the CFDA by failing

¹⁵ La. R.S. 18:1505.4(A)(1).

¹⁶ See La. R.S. 18:1483(7)(a) (defining “district office,” which includes members of the Louisiana Legislature).

¹⁷ La. R.S. 18:1495.4(A).

¹⁸ La. R.S. 18:1505.1(B).

¹⁹ La. R.S. 18:1495.4(B)(3).

²⁰ La. R.S. 18:1495.4(B)(4).

²¹ La. R.S. 18:1495.4(B)(5).

²² La. R.S. 18:1505.4(A)(4).

²³ La. R.S. 18:1505.1(A).

to file his 30-P report by September 18, 2019;²⁴ his 10-P report by October 8, 2019;²⁵ and his 10-G report by November 17, 2019.²⁶ As a result, the BOE is authorized to impose an additional civil penalty of up to \$10,000 for each report as allowed by La. R.S. 18:1505.4(A)(4)(a) and (b).

(The *Order* appears on the following page.)

²⁴ The 30-P report was due September 12, 2019; the third day after September 12, 2019, was September 15, 2019; and the sixth day after September 12, 2019, was September 18, 2019.

²⁵ The 10-P report was due October 2, 2019; the third day after October 2, 2019, was October 5, 2019; and the sixth day after October 2, 2019, was October 8, 2019.

²⁶ The 10-G report was due November 6, 2019; the third day after November 6, 2019, was November 9, 2019; and the eleventh day after November 6, 2019, was November 17, 2019.

ORDER

IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty not to exceed \$10,000 against Lester Smith for failing to file his 30-P campaign finance disclosure report by the sixth day after it was due.

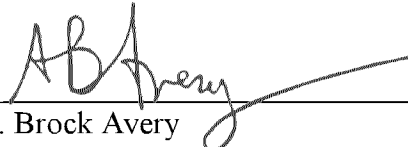
IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty not to exceed \$10,000 against Lester Smith for failing to file his 10-P campaign finance disclosure report by the sixth day after it was due.

IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty not to exceed \$10,000 against Lester Smith for failing to file his 10-G campaign finance disclosure report by the eleventh day after it was due.

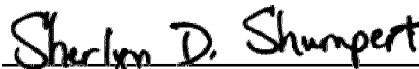
Rendered and signed December 17, 2020, in Baton Rouge, Louisiana.



Lance B. Vinson
Presiding Administrative Law Judge
Ethics Adjudicatory Board - Panel A



A. Brock Avery
Administrative Law Judge
Ethics Adjudicatory Board - Panel A



Sherlyn Shumpert
Administrative Law Judge
Ethics Adjudicatory Board - Panel A

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Thursday, December 17, 2020, I have sent a copy of
this decision/order to all parties of this matter.

REVIEW RIGHTS

Requests for rehearing, reopening, or reconsideration are subject to the procedures, timing requirements, and legal grounds provided in Louisiana Revised Statute 49:959, with the time for filing calculated pursuant to Louisiana Code of Civil Procedure article 5059. To determine your review rights, you should act promptly and seek legal advice.

To request a rehearing or reconsideration, please send it to one of the addresses indicated below:

EMAIL documents to:

EABprocessing@adminlaw.state.la.us

FAX documents to:

EAB Section Deputy Clerk

(225) 219-9820

MAIL documents to:

DAL – EAB Section

ATTN: EAB Section Deputy Clerk

P. O. Box 44033

Baton Rouge, LA 70804-4033

If you do not request a rehearing of your decision or your rehearing request is denied, you have the right to seek judicial review in accordance with La. R.S. 42:1142(A)(1), with the time for requesting judicial review calculated pursuant to La. C.C.P. art 5059. To determine your review rights, you should act promptly and seek legal advice.